

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1413 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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RAMESHBHAI G PATEL

Versus

CHIMANBHAI D PATEL

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Appearance:

MR HM PARIKH for Petitioners

MR NS DESAI for Respondent No. 1, 2

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 22/12/98

ORAL JUDGEMENT

1. Prayer has been made in the trial court by the plaintiffs-petitioners for impleadment of Patel Rambhai Motibhai, Dahyabhai Motibhai and Chandubhai Motibhai, holders of land bearing Survey No.256 and 257 of village Keriya, as defendants in Regular Civil Suit No.599/87.

2. In the Court of Civil Judge (S.D.) Nadiad, originally a suit has been filed by the

plaintiffs-petitioners against the defendants-respondents No. 1 and 2. This suit relates to the dispute of right of way of the plaintiffs-petitioners through the land of survey numbers of which the defendants-respondents are the owners. This application purported to be filed under Order 6 Rule 17 of C.P.C. in the fact that the plaintiffs-petitioners have the right of way through the fields of these three persons and this fact has been admitted by them also by filing an affidavit in the suit but in the year 1993 they turned back from this admission and as such a cause has been accrued to the plaintiffs-petitioners to implead them as defendants in the suit.

3. Prima-facie the amendment as sought for by the plaintiffs-petitioners seems to be necessary for the final decision of the suit but it cannot be granted at this stage for the reasons that these three persons proposed to be added as defendants in the suit were not party before the trial court as well as in the revision application.

4. Learned counsel for the respondents is also in agreement that the matter may be remanded back to the trial court to decide the application of the plaintiffs-petitioners for impleadment of these three persons as defendants after giving notice to them and hearing the concerned parties.

5. In view of this concession made by the other side and the observations made in the aforesaid part of this judgment, the order of the learned trial court dated 12th August, 1994 is quashed and set aside. Learned trial court is directed to decide this application afresh in accordance with law after giving notice to three persons proposed to be impleaded as defendants as well as the plaintiffs and defendants. The Civil Revision Application and Rule stand disposed of accordingly with no order as to costs.

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